

FILED

United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

November 6, 2023

Christopher M. Wolpert
Clerk of Court

TREMANE WOOD,

Petitioner - Appellant,

v.

CHRISTE QUICK, Warden, Oklahoma
State Penitentiary,

Respondent - Appellee.

No. 23-6134
(D.C. No. 5:10-CV-00829-HE)
(W.D. Okla.)

ORDER

Before **TYMKOVICH**, **MATHESON**, and **BACHARACH**, Circuit Judges.

In this appeal, Tremane Wood seeks to challenge the district court's order concluding his Fed. R. Civ. P. 60(b) motion was an unauthorized second or successive 28 U.S.C. § 2254 petition and transferring it to this court for consideration. The transferred matter was opened as No. 23-6129. Wood subsequently filed a notice of appeal, which resulted in this appeal. On September 19, 2023, the court issued an order directing Wood to address this court's jurisdiction to review the district court's transfer order via this appeal. On October 13, 2023, Wood filed a motion to remand to the district court in No. 23-6129.

Upon consideration of the jurisdictional briefing from the parties and the applicable law, we conclude this court lacks jurisdiction to review, via this appeal, the

district court's conclusion that Wood's Rule 60 motion was an unauthorized second or successive § 2254 petition. *See FDIC v. McGlamery*, 74 F.3d 218, 221 (10th Cir. 1996) (holding that an order transferring a matter under 28 U.S.C. § 1631 is not immediately appealable); *see also Marmolejos v. United States*, 789 F.3d 66, 69 (2d Cir. 2015) (same for an order transferring an unauthorized second or successive § 2255 motion to a court of appeals under § 1631). In doing so, we note that Wood's challenge to the district court's conclusion is forth in his motion to remand, which is pending in No. 23-6129. We are not persuaded by Wood's suggestion that the district court's decision will evade full review in No. 23-6129 because 28 U.S.C. § 2244(b)(3)(E) prohibits petitions for rehearing and certiorari. *See Castro v. United States*, 540 U.S. 375, 380 (2003) (noting that § 2244(b)(3)(E)'s prohibition only applies where the subject of a petition for further review is the denial of authorization); *In re Clark*, 837 F.3d 1080, 1082 (10th Cir. 2016) (holding that § 2244(b)(3)(E) did not bar petition for rehearing as to procedural matter apart from the denial of authorization).

APPEAL DISMISSED.

Entered for the Court

A handwritten signature in black ink, appearing to read 'Christopher M. Wolpert', with a long horizontal stroke extending to the right.

CHRISTOPHER M. WOLPERT, Clerk

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Byron White United States Courthouse
1823 Stout Street
Denver, Colorado 80257
(303) 844-3157
Clerk@ca10.uscourts.gov

Christopher M. Wolpert
Clerk of Court

Jane K. Castro
Chief Deputy Clerk

November 06, 2023

Ms. Amanda Bass
Mr. Keith Hilzendeger
Ms. Alison Y. Rose
Office of the Federal Public Defender
District of Arizona
850 West Adams Street, Suite 201
Phoenix, AZ 85007

RE: 23-6134, Wood v. Quick
Dist/Ag docket: 5:10-CV-00829-HE

Dear Counsel:

Enclosed please find the final order issued today in this case by the court.

Please contact this office if you have questions.

Sincerely,



Christopher M. Wolpert
Clerk of Court

cc: Jennifer L. Crabb
Joshua L. Lockett

CMW/rls